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TO RUEHC/SECSTATE WASHDC IMMEDIATE 3530
INFO RUEHBO/AMEMBASSY BOGOTA PRIORITY 5301
RUEHCV/AMEMBASSY CARACAS PRIORITY 1534
RUEHLP/AMEMBASSY LA PAZ FEB 9630
RUEHPE/AMEMBASSY LIMA PRIORITY 0261
RUEHGL/AMCONSUL GUAYAQUIL PRIORITY 9845
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SUBJECT: NEW CHARGES AGAINST EX-PRES. GUTIERREZ

¶1. (U) Summary: The acting attorney general Cecilia Armas charged ex-President Lucio Gutierrez with violating the constitution while President by dissolving the Supreme Court in April 2005, and for convoking a special session of Congress which selected a new court in December 2004. Gutierrez has been detained since he returned from self-imposed exile in October, on charges of attempting to undermine the security of the state with public statements made while in exile. These are the first charges against Gutierrez based on acts committed while he was President, and arise amid growing criticism of the earlier charges. End Summary.

¶2. (U) Armas presented charges against ex-President Lucio Gutierrez to the Supreme Court on February 2, accusing Gutierrez of violating the constitution by convoking a special session of Congress which removed Supreme Court magistrates on December 8, 2004 and removing them again by decree on April 15, 2005, during a declared state of emergency in the capital. Gutierrez is charged with violating Article 199 of the constitution, which states that the Supreme Court is independent, and cannot be interfered with by any other part of the government.

¶3. (U) The president of the Supreme Court, Jaime Velasco, will review and rule on the charges. Velasco, however, was a member of the Supreme Court formed in 1997, which Gutierrez disbanded in December 2004. He may therefore be barred from trying the case himself. Armas is still investigating four other allegations against Gutierrez, including for misuse of campaign funds and for the death of Chilean journalist Julio Garcia, who died of a heart attack after being exposed to tear gas during mass protests in April of last year.

¶4. (U) Until now, Gutierrez had only been held since his return in October for charges of undermining the security of the state with his claims, made to CNN and other news channels while in the U.S., that he was Ecuador's legitimate leader. With the formation of the new Supreme Court in December 2005, Gutierrez can now be charged for other acts he committed as President.

¶5. (U) Approximately 30 Gutierrez supporters protested at the Supreme Court on February 2 and 12 have since declared a hunger strike. Gutierrez is currently being held in Quito's maximum security Fourth Prison. His brother, Gilmar, and collaborator Fausto Cobo were moved to a new maximum security jail west of Quito in Santo Domingo de los Colorados on January 21. Meanwhile, the Patriotic Society party declared Gutierrez will be the party's presidential nominee in the October elections. Few believe, however, that Gutierrez' candidacy will be approved by the electoral tribunal,

controlled by other parties.

Comment

¶6. (SBU) Previous charges against Gutierrez are transparent violations of his freedom of speech and were beginning to draw criticism, even from some Gutierrez opponents. Charging Gutierrez with violating the constitution might put the prosecution on somewhat firmer ground, but not much. Violations of the constitution are normally ruled on by the Constitutional Tribunal, which was disbanded in December 2004 by Gutierrez' congressional allies, and is in the process of being reconstituted by Congress. We hope that political vendettas will not prevent Gutierrez from receiving a fair trial before the newly independent Supreme Court or more appropriately, from having the legality of his actions as president ruled on by a new Constitutional Tribunal. At the least, however, political motives seem likely to continue to delay his day in court.

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